

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BARRY DWAYNE MINNFEE

Petitioner,

v.

ASSOCIATE ATTORNEY GENERAL,
U.S. DISTRICT COURT N. D.
AMARILLO, MAGISTRATE JUDGE
CLINTON E. AVERITTE AND
ROBERT MUELLER,

Respondents.

Case No. C07-5517RBL

REPORT AND
RECOMMENDATION

**NOTED FOR:
November 23, 2007**

This habeas corpus petition has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636 (b)(1)(B) and Local Magistrates' Rules MJR 3 and MJR 4. Petitioner filed this action pursuant to 28 U.S.C. § 2254. Petitioner is challenging a conviction from Potter County District Court in Texas. He was convicted of Aggravated Assault With a Deadly Weapon. He also challenges the United States District Court for the Northern District of Texas in Amarillo dismissing prior Habeas Corpus petitions filed in that court. In the proposed petition, petitioner also attempts to file a "Bivens" action (Dkt. #1, Proposed petition).

During the course of 2007, Mr. Minnfee has attempted to file several actions in the United

1 States District Court for the Western District of Washington at Seattle. The actions include both
 2 Habeas Corpus petitions and Civil Rights or “Bivens” actions. Those cases include: Minnfee v.
 3 Ruth, 07-CV-0200JLR, (Dismissed Without Prejudice for improper venue); Minnfee v. Associate
 4 Attorney General et al., 07-CV-399-JCC-JPD (Dismissed Without Prejudice for improper venue
 5 with a warning concerning the filing of “frivolous” actions); Minnfee v. Mueller, 07-CV-518RSL-
 6 JPD, (Dismissed for improper venue); and Minnfee v. Associate Attorney General, 07-CV-1212JLR-
 7 MJB (Dismissed for improper venue).

8 In each of the above-mentioned cases Mr. Minnfee challenges actions that have taken place in
 9 Texas. These actions have led to his being convicted and his serving time in Texas correctional
 10 facilities. Mr. Minnfee’s conviction and sentence have no connection to Washington State, this
 11 Judicial District, or the Ninth Circuit. Venue is clearly improper. Mr. Minnfee has been instructed
 12 that his filings are not properly in the United States District Court for the Western District of
 13 Washington at Seattle. He is now attempting to file the same type of action in the District Court at
 14 Tacoma. Mr. Minnfee challenges his Texas Conviction and the actions of the United States District
 15 Court Northern District of Texas (Dkt # 1). This court lacks *in personam* jurisdiction over the
 16 parties and venue is not proper. Mr. Minnfee has not perfected his application for *in forma pauperis*
 17 status, however, the action should be dismissed without any further delay.

18 This action should be Dismissed Without Prejudice. Mr. Minnfee is warned that continued
 19 filings of this nature will result in sanctions which may include a dismissal of cases with prejudice,
 20 monetary sanctions, or the entry of an order restricting future filings. Pursuant to 28 U.S.C. §
 21 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the parties shall have ten (10) days
 22 from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file
 23 objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474
 24 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set
 25 the matter for consideration on **November 23, 2007**, as noted in the caption.

26 Dated this 29 day of October, 2007.

27 /S/ J. Kelley Arnold
 28 J. Kelley Arnold
 United States Magistrate Judge